

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Serial No.: 09/611,548 Confirmation No.: 6763
Applicant: Douglas G. Lowenstein, et al.
Title: FINANCING OF TENANT IMPROVEMENTS
Filed: July 7, 2000
Art Unit: 3692
Examiner: S. Chencinski

Atty. Docket: 114595-02
Customer No. 38492

REQUEST FOR SUPERVISORY OVERSIGHT PURSUANT TO MPEP § 707.02

Mail Stop Amendment
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Pursuant to MPEP § 707.02, Applicant requests a statement by the Supervisory Examiner that there will be no further examiner conduct outside the scope of the authority delegated by the Office. Applicant requests assurance that there will be no further claim interpretations that are unsupported by any evidence of the ordinary understanding. Applicant requests confirmation of the promise that has been repeatedly made and broken, that all future Office Actions will address every limitation of every relevant claim, and every *prima facie* element of every legal theory thought to apply.

In a telephone conference on May 1, 2007, James Wilson, on detail to the Office of the Commissioner for Patents, stated that a change of examiners was under consideration, and that all concerned had promised that all future Office papers would be complete. Applicant notes that this is the **sixth** time that this promise has been made – Applicant's attorney is very skeptical of Office personnel's intention to keep any promise, and hopes to be proven wrong.

Applicant observes that the recent problems with this application appear to center on Examiner Poinvil, not Examiner Chencinski. This attorney's impression is that Examiner Chencinski appears to be trying to do a good job, but Examiner Poinvil is at best getting in the way. Some patterns of Examiner Poinvil's conduct are so consistent as to support an inference that he is deliberately obstructing prosecution.

The following is a short overview; a more complete set of facts is set forth in the Summary of Interviews filed on February 27, 2007.

In two telephone interviews, Examiner Poinvil has wasted almost the entire time available by making up totally new, unheard of rules out of thin air, and then refusing to back down when it is pointed out that his view is squarely in conflict with the MPEP or other PTO precedent. When asked to look at the relevant PTO documents, he threatens to end the interview. He stated that he regards the MPEP as merely optional “guidelines,” even when it uses the word “must.”

Examiner Poinvil knows very little about the field of business methods. An Affidavit of an expert in the field states that many Examiner Poinvil’s statements are incomprehensible “gibberish” and much of the rest is wrong. See Affidavit of Lowenstein, filed February 27, 2007. When confronted with dictionary definitions and the like, he refuses to acknowledge that his understanding may be incomplete or may need to be modified.

Examiner Poinvil cannot be trusted to keep his word. He will say one thing one minute, and insist on 180° the opposite a few minutes later. (a) In the interview of December 2005, he insisted that the same claim language was “functional” and then “non-functional” no more than two minutes apart. Interview Summary of February 27, 2007 ¶ 4. (b) On 7/11/2006, Examiner Poinvil promised in writing that if certain issues were discussed in papers – issues that should have been discussed in several prior Office papers but were not – the Office’s next paper would address the long-omitted issues. Examiner Poinvil’s Advisory Action of August 30, 2006 breaks both the promise and the PTO’s requirement to “answer all material traversed.” Examiner Poinvil asserts that he will never address the issues. (c) In the Interview of December 13, 2006, this attorney asked the same question several ways to make sure that there was a clear agreement that certain claim language was “useful, concrete and tangible;” half an hour later, Examiner Poinvil refused to honor his earlier agreement. Interview Summary filed February 27, 2007 ¶¶ 19, 31. First he stated he would consider Board decisions published in the USPQ, and less than a minute later, refused to do so. Interview Summary filed February 27, 2007 ¶ 24.

Prosecution cannot advance when an examiner continually defies Office procedure.
Kindly assign a new examiner who respects the Office's procedural requirements.

In addition, it must be noted that SPE Chilcot has made a number of promises that were not kept – his October 2006 promise to ensure that all future actions would be complete, his promise that any defect in the February 26, 2006 paper would be communicated “today or tomorrow.” SPE Chilcot has disregarded Office policy of returning phone calls in one business day. SPE Chilcot failed to ensure that his subordinate examiners complied with Office policy relating to compact prosecution. Applicant requests an unequivocal written statement by SPE Chilcot that he will ensure that Office policy will be fully observed in the future, and that his promises will be kept. If he cannot write such an unequivocal statement, he is requested to reassign the application to another SPE who can.

Respectfully submitted,

Dated: May 1, 2007

By: ____/David E. Boundy/____

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